

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

GREGORY MENOVCIK,

Plaintiff,

v.

BASF CORPORATION,

Defendant.

Case No. 09-12096

Honorable Julian Abele Cook, Jr.

ORDER

The Plaintiff, Gregory Menovcik, has accused his former employer, BASF Corporation, of (1) unlawfully terminating him because of his age, in violation of the Elliott-Larsen Civil Rights Act, Mich. Comp. Laws § 37.2101, et seq. and the Employee Retirement Income Security Act, 29 U.S.C. § 1140 et seq.; (2) defaming him by mischaracterizing the reasons for his termination to third persons; (3) intentionally inflicting an unacceptable level of emotional distress upon him; and (4) wrongfully interfering with an advantageous business relationship.

On August 24, 2009, the Defendant filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6) with respect to Count IV (defamation), Count V (intentional infliction of emotional distress), and Count VI (interference with an advantageous business relationship). On November 18, 2009, the Plaintiff filed a motion to amend his complaint, in which he voluntarily dismissed Count VI and revised Counts III, IV, and V of his complaint. Seven days later (November 25th), the Court received a letter from the Defendant in which it, through its counsel, asserted the

following:

In light of [the] Plaintiff's recent motion to amend his complaint along with his proposed amended complaint, [the Defendant] withdraws its pending motion to dismiss. Further, [the Defendant] is withdrawing its opposition to [the] Plaintiff's motion to amend and will not oppose the filing of the amended complaint attached to that motion.¹

According to the Federal Rules of Civil Procedure, "a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2). In this case, the Court believes that the Plaintiff's proposed amended pleading is warranted. Inasmuch as the Defendant has (1) retracted its opposition to the pending request to amend, and (2) withdrawn its motion to dismiss, the Court will grant the Plaintiff's motion seeking leave to file a first amended complaint which must be filed within a period of seven (7) days from the date of this order.

IT IS SO ORDERED.

Dated: December 18, 2009
Detroit, Michigan

S/Julian Abele Cook, Jr.
JULIAN ABELE COOK, JR.
United States District Court Judge

¹The Defendant also added the caveat in this letter that its withdrawal of opposition to the Plaintiff's request to amend should not be construed as an indication that it views the amended complaint as having any merit.

CERTIFICATE OF SERVICE

The undersigned certifies that the foregoing Order was served upon counsel of record via the Court's ECF System to their respective email addresses or First Class U.S. mail to the non-ECF participants on December 18, 2009.

s/ Kay Doaks
Case Manager